2174.

SUPREME COURT OF THE UNITED STATES.

No. 193.

HENRY WEBSTER, PLAINTIFF IN ERROR,

vs.

PETER COOPER.

IN ERROR TO THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF MAINE.

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Gideon, Printer.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judges of the circuit court of the United States, for the first circuit and district of Maine, greeting:

Writ of error.

Because in the record and proceedings, as also in the rendition of the judgment in a plea which is in the said circuit court before you, between Henry Webster, of the parish of Saint George, in the county of Middlesex, in England, esquire, an alien, subject of the United Kingdom of Great Britain and Ireland, demandant, and Peter Cooper, of Pittston, in the county of Kennebeck, in the State of Maine, yeoman, a citizen of said State of Maine, in our said district, defendant, a manifest error hath happened to the great damage of the said Henry Webster, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this first day of September, in the year of our Lord one thousand eight hundred and fifty-one.

GEO. F. EMERY,
Clerk, C. C. U. S., for Maine district.

Allowed by

ASHUR WARE,
District Judge.

Return.

DISTRICT OF MAINE, *ss.*

First circuit, September 1, 1851.

Pursuant to the within writ to us directed, we do hereby, under our seal, distinctly and openly, send the record and proceedings in the suit aforesaid, with all things concerning the same, together with this writ,

to the Supreme Court of the United States, at Washington, to be holden at the time within mentioned.

ASHUR WARE, [SEAL.]
District judge, U. S., for the district of Maine, and one of the judges of said circuit court.

Citation.

UNITED STATES OF AMERICA, *ss.*

[L. S.] To Peter Cooper, of Pittston, in the county of Kennebeck, in the State of Maine, and a citizen of said State, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the first circuit and district of Maine, wherein Henry Webster, of the parish of Saint George, in the county of Middlesex, in England, esquire, an alien, subject of the United Kingdom of Great Britain and Ireland, is plaintiff in error, and you are defendant in error, to shew cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this first day of September, in the year of our Lord one thousand eight hundred and fifty-one.

ASHUR WARE,
District judge of the U. S. for Maine district, and one of the judges of said circuit court.

Service.

STATE OF MAINE, *ss.*

I acknowledge service of the within citation, and agree to appear at the court as summoned therein, and waive all objection for want of other service.

F. ALLEN,
Attorney to Peter Cooper.

September 9, 1851.

Complaint.

To the honorable the justices of the Supreme Court of the United States.

Complains Henry Webster, of the parish of St. George, in the county of Middlesex, in England, esquire, an alien, subject of the United Kingdom of Great Britain and Ireland, that, in the record and process of a suit wherein said complainant was demandant, and Peter Cooper,

of Pittston, in the county of Kennebeck, in the State of Maine, yeoman, a citizen of said State, was defendant, in the circuit court of the United States, for the first circuit, begun and holden at Portland, within and for the district of Maine, on the twenty-third day of April, in the year of our Lord one thousand eight hundred and fifty-one, whereof an authenticated transcript shall be produced in the said Supreme Court of the United States, next to be holden at Washington, on the first Monday of December, in the year aforesaid, the following manifest errors have intervened, that is to say, the said circuit court erred in declining to instruct the jury, as requested in said demandant's prayer for instructions—

First. That the act of the legislature of Maine, of the year 1848, ch. 87, is not applicable to any case in which the title of the demandant had accrued before the passage of said act.

Second. That said act is not applicable to the present action, the same having been commenced before the passage of said act.

Third. That said act is void, because it is in violation of the constitution of the State of Maine, art. 1, sec. 21, and because it is retrospective in its operation upon vested rights of the demandant.

Fourth. That said act is void, because it is in violation of the Constitution of the United States, as being a law impairing the obligation of contracts.

Fifth. That by the true and legal construction of the will of Florentius Vassall, said Elizabeth Vassall took only an estate for life in the demanded premises.

Sixth. That by the true and legal construction of the will of Florentius Vassall, the demandant took a remainder in tail male, as tenant in common with said Henry Edward Fox, in the demanded premises expectant on the life estate of said Elizabeth Vassall.

Seventh. That the demandant is not barred from recovering one undivided half of the demanded premises, by the statutes of limitations of the States of Maine or Massachusetts, or any of them.

Eighth. That if the demandant shows a right to recover one undivided half of the demanded premises, he may recover the same under the writ in this case, although he therein demands the whole of said demanded premises.

Ninth. That it is not necessary, for the purpose of enabling the demandant to recover in this action, that he should have taken the name of Vassall.

Tenth. Said circuit court erred in instructing the jury, contrary to the demandant's prayer for instructions, "that, by the true and lawful construction of the said will of Florentius Vassall, no legal estate in the demanded premises, or any part thereof, was ever vested in the demandant, but that, if the legal estate in the demanded premises was by force and effect of the said will vested in any person or persons, it was thereby vested and continued to be in the trustees named in said will, viz., Lord Viscount Falmouth, Lord Viscount Barrington, and Charles Spooner, esquire, the survivors and survivor of them, and the heirs of

such survivor, and that, therefore, the demandant could not maintain the present action to recover the same; and that it was, therefore, unnecessary to instruct the jury upon the other points mentioned in the demandant's prayer for instructions."

Finally, said circuit court erred in this, that the judgment rendered in said suit is, "that the demandant take nothing by his writ, but that the defendant recover against said demandant his costs of defence, taxed at ;" whereas it ought to be, that the demandant recover against said defendant possession of one undivided half of the demanded premises, and his costs of suit.

Wherefore, the said Henry Webster prays the consideration of the said Supreme Court, and that the judgment aforesaid, and every part thereof, may be reversed.

By his attorneys, FRANKLIN DEXTER,
E. H. DAVIES.

A true copy. Attest:

GEO. F. EMERY, *Clerk.*

Bond.

Know all men by these presents, that we, Franklin Dexter, of Beverly, in the State of Massachusetts, and Edward H. Davies, of Portland, in the State of Maine, esquires, are holden and firmly bound unto Peter Cooper, of Pittston, in the State of Maine, yeoman, in the full sum of five hundred dollars, to be paid to the said Peter Cooper, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, this first day of September, in the year eighteen hundred and fifty-one.

Whereas, at a term of the circuit court of the United States, for the first circuit, holden at Portland, in the district of Maine, on the twenty-third day of April, in the year of our Lord eighteen hundred and fifty-one, in a suit depending therein, in which Henry Webster, of the parish of St. George, in the county of Middlesex, in England, esquire, was plaintiff, and the said Peter Cooper was defendant, judgment was rendered against the said Henry Webster; and the said Henry Webster having sued out a writ of error to the Supreme Court of the United States, next to be holden at Washington, on the first Monday of December next, to reverse the judgment aforesaid—

Now, therefore, the condition of the above obligation is such, that if the above named Henry Webster shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise shall remain in full force and virtue.

FRANKLIN DEXTER, [L. S.]
EDWARD H. DAVIES. [L. S.]

2177.

Signed, sealed, and delivered, in presence of—
F. G. DEXTER, } Witnesses to F. Dexter.
ARTHUR DEXTER, }
GEO. F. EMERY, witness to E. H. Davies.

Approved: A. WARE, *Dist. judge*.

A true copy—attest: GEO. F. EMERY, *Clerk*.

Original writ.

FIFTH CIRCUIT OF THE UNITED STATES,
District of Maine, ss.

[L. S.] The President of the United States of America, to the marshal of our district of Maine, or his deputy, greeting:

We command you to attach the goods or estate of Peter Cooper, of Pittston, in the county of Kennebeck, in said State of Maine, yeoman, a citizen of said State of Maine, in our said district, to the value of three thousand dollars, and summon the said Peter Cooper (if he may be found in your precinct) to appear before our circuit court, next to be holden at Portland, within and for our district of Maine, on the first day of May next, then and there, in our said court, to answer unto Henry Webster, of the parish of Saint George, in the county of Middlesex, in England, esquire, an alien, subject of the United Kingdom of Great Britain and Ireland, in a plea of land, wherein he demands against the said Cooper a certain piece or parcel of land situate in said Pittston, and being part of the great five mile lot No. seventeen, (17,) so called, bounded easterly by Eastern river, northerly by land occupied by Richard Call, west by land occupied by one Haley, and a lot in possession of one Bliss, being about four hundred rods west from Eastern river, and south by land occupied by Elizabeth Call, and the north line thereof extended westerly about four hundred rods from said river, containing about one hundred acres, of which said piece and parcel the said Cooper disseized him within twenty years last past, as it is said; whereupon the said demandant says that within twenty years last past he was seized of the said piece and parcel of land in his demesne, as of fee, in tail and remainder, and of which the said Cooper disseized him as aforesaid, and still unjustly withholds, to the damage of the said plaintiff (as he says) the sum of three thousand dollars, which shall then and there be made to appear, with other due damages.

We command you, therefore, that you summon the said Cooper, if he may be found in your precinct, to appear before our said court, as aforesaid; and have you there this writ, with your doings therein.

Witness the honorable Roger B. Taney, at Portland, the fourteenth day of April, in the year of our Lord one thousand eight hundred and forty-six. J. MUSSEY, *Clerk*.

CHARES S. DAVEIS,
EDWARD H. DAVEIS,
Attorneys.

Officer's return.

MAINE DISTRICT, *ss.*

April 17, 1846. By virtue of this precept I have made service of the within named defendant, by leaving at his last and usual place of abode an attested copy of this writ.

NICHOLAS NICHOLS,
Deputy marshal.

Fees—Service - - - -	$2 00
Copy - - - -	1 00
Travel - - - -	3 95
Tolls and ferriage - -	75
	$7 70

A true copy of the original writ and marshal's return thereon.
Attest: GEO. F. EMERY, *Clerk.*

Pleadings.

Circuit court of the United States, Maine district.
April term, 1851.

HENRY WEBSTER
vs.
PETER COOPER.

And now the said Peter Cooper comes and defends, &c., when and where, &c., and for plea saith, he never disseized the said Henry Webster in manner and form as he hath declared against him in his writ and declaration; and thereof puts himself on the country.

By his attorney, F. ALLEN.
And the said demandant likewise.
By his attorneys, F. DEXTER,
E. H. DAVEIS.

A true copy.
Attest: GEO. F. EMERY, *Clerk.*

Verdict.

Circuit court of the United States, Maine district.
April term, 1851.

HENRY WEBSTER
vs.
PETER COOPER.

The jury find that the said Peter Cooper did not disseize the said Webster in manner and form as he hath alleged in his writ and declaration.

JAMES M. DEERING, *Foreman.*

A true copy.
Attest: GEO. F. EMERY, *Clerk*

Judgment.

MAINE DISTRICT, *ss.*

First circuit.

At a circuit court of the United States for the first circuit, begun and holden at Portland within and for said Maine district, on the twenty-third day of April, in the year of our Lord one thousand eight hundred and fifty-one, present, the honorable Levi Woodbury, associate justice of the Supreme Court, and the honorable Ashur Ware, district judge.

Henry Webster, of the parish of Saint George, in the county of Middlesex, in England, esquire, an alien, subject of the United Kingdom of Great Britain and Ireland, demandant, against Peter Cooper, of Pittston, in the county of Kennebeck, in said State of Maine, yeoman, a citizen of said State of Maine in our said district, defendant, in a plea of land wherein he demands against the said Cooper a certain piece or parcel of land situate in said Pittston, and being part of the great five mile lot No. seventeen, (17,) so called, bounded easterly by Eastern river, northerly by land occupied by Richard Call, west by land occupied by one Haley, and a lot in possession of one Bliss, being about four hundred rods west from Eastern river, and south by land occupied by Elizabeth Call, and the north line thereof extended westerly about four hundred rods from said river, containing about one hundred acres, of which said piece and parcel the said Cooper disseized him within twenty years last past, as it is said. Whereupon the said demandant says, that within twenty years last past he was seized of the said piece and parcel of land in his demesne as of fee, in tail and remainder, and of which the said Cooper disseized him as aforesaid, and still unjustly withholds, to the damage of the said plaintiff, as he says, the sum of three thousand dollars.

This action was entered at May term, in the year of our Lord one thousand eight hundred and forty-six, and was thence continued from term to term unto the present term; and now the said Peter Cooper comes and defends, &c., when and where, &c., and for plea saith, he never disseized the said Henry Webster in manner and form as he hath declared against him in his writ and declaration, and thereof puts himself on the country.

By his attorney, F. ALLEN.

And the said demandant likewise,

By his attorneys, F. DEXTER [&] E. H. DAVEIS.

And thereupon said cause, after a full hearing, is committed to a jury duly impannelled and sworn, who, after mature deliberation thereon, return their verdict "that the said Peter Cooper did not disseize the said Webster in manner and form as he hath alleged in his writ and declaration." It is therefore considered by the court here, to wit, at the adjournment of said April term, holden on the first day of September, in the year of our Lord one thousand eight hundred and fifty-one, that the demandant take nothing by his writ, but that the

defendant recover against said demandant his costs of defence, taxed at .

Recorded by GEO. F. EMERY, *Clerk*.
A true copy. Attest: GEO. F. EMERY, *Clerk*.

Exceptions.

Circuit court of the United States, for the first circuit, April term, 1851.

DISTRICT OF MAINE, *ss*.

HENRY WEBSTER
vs.
PETER COOPER.

Plaintiff's bill of exceptions.

And now the demandant's counsel files this his bill of exceptions, viz:

Upon the aforesaid issue being joined between the said parties, the demandant, to prove and maintain the said issue on his part, produced and gave in evidence the following written agreement between the said parties, viz:

It is agreed by the parties that the following statement of facts is true, namely, that the demanded premises belonged to the proprietors of the Kennebec purchase, and were by them duly granted and assigned to Florentius Vassall, one of the proprietors in fee, in the year 1756, being included in the grant recorded in the records of the proprietary.

That Florentius Vassall made his will September 20th, 1777, and died at London, 1778, seized of the lands in question, they then being unoccupied wild lands. The will was afterwards duly proved in the prerogative court of Canterbury, September 14, 1778, a copy of which will, with its exemplifications, has been duly filed and recorded in the probate office for the county of Kennebec; which will was offered in evidence as copied, and makes a part of this case. (C.)

Richard Vassall, named in the will, died about 1795, leaving only one child, Elizabeth Vassall, who married Sir Godfrey Webster, deceased, about the first day of January, 1793, by whom she had issue two sons, namely, Sir Godfrey Vassall Webster, who died in the lifetime of said Elizabeth, without issue, and Henry Webster, the demandant. Said Elizabeth afterwards, namely, in January, 1796, was legally divorced from her husband, the said Sir Godfrey Webster, and on the first day of July, 1797, she was legally joined in marriage with Richard Henry Fox, afterwards Lord Holland, by whom she had issue one son, Henry Edward Fox, who is now living. All charges upon the land devised have been satisfied, and they are not now subject to any life estate, estate for years, or outstanding terms, under the will. Said Lord Holland died on the 1841; said Lady Holland died in the fall of the year 1845. The persons named in said will as devi-

sees in remainder, after the failure of the issue of said Elizabeth, or their lineal descendants, are now living in England, as is the said Henry Edward Fox, son of said Elizabeth. That said Florentius Vassall was, at the time of said grant, a resident in Boston, State of Massachusetts; that he, on or before the year 1775, left his said residence, went to England, and never returned; and that neither he, nor any of the devisees named in said will, have ever resided within the limits of the United States since that time. The premises demanded, being the matter in dispute, are of greater value than two thousand dollars.

The tenant, and those from whom he legally derives title to said demanded premises, have been in the quiet, undisturbed, open, notorious, and exclusive possession and occupation of said premises for and during the term of fifty years next preceding the commencement of this action, he and they claiming to hold the same adversely to any claim of said demandant, or any other person, as his and their own property in fee simple.

For plaintiff, C. S. & E. H. DAVEIS.
For tenant, FREDERICK ALLEN, and
FESSENDEN & DEBLOIS.

The demandant also produced and gave in evidence a duly authenticated copy of the said will of Florentius Vassall, in the words and figures following, to wit:

To all and singular the faithful in Christ, to whom these, our present letters testimonial, shall come, or whom the matters herein written do, or may hereafter, in any wise concern, William, by divine Providence Archbishop of Canterbury, primate of all England, and metropolitan, send greeting in our Lord God everlasting, and will that undoubted faith be given to these presents, and do make known and will, that it be hereby made known to you, that on searching the registry of our prerogative court of Canterbury, in the archives thereof, there well and faithfully preserved and kept, we have found, among other things in the same, that on the fourteenth day of September, in the year of our Lord one thousand seven hundred and seventy-eight, at London, administration, with the will annexed, of all and singular the goods, chattels, and credits of Florentius Vassall, formerly of the parish of Saint Marylebone. in the county of Middlesex, but late of the Island of Jamaica, esquire, deceased, having, whilst living, and at the time of his death, goods, chattels, or credits, in divers dioceses or jurisdictions, sufficient to found the jurisdiction of our prerogative court of Canterbury aforesaid, was granted to Richard Vassall, esquire, the son of the said deceased, and the residuary legatee named in the said will, he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all and singular the said goods, chattels, and credits, and to exhibit the same into the registry of our said court, on or before the last day of March next ensuing, and also to render a just and true account thereof; the right honorable Hugh, Lord Viscount Falmouth, the right honorable William

Wildman, Lord Viscount Barrington, and Charles Spooner, esquire, executors named in the said will, having renounced the probate and execution thereof; which said will, and also an affidavit of Thomas Goostrey, follow in these words:

This is the last will and testament of me, Florentius Vassall, late of the island of Jamaica, in the West Indies, but now of Wimpole street, in the parish of Saint Marylebone, in the county of Middlesex, and kingdom of Great Britain, esquire, made this twentieth day of September, in the year of our Lord one thousand seven hundred and seventy-seven.

I desire my remains may be deposited in the vault I have lately made in the church yard in Saint Marylebone, where my late wife is buried. And as to all my estate and effects whatsoever I dispose thereof as follows, that is to say, I give and devise all those my several plantations in the parish of Westmoreland, in the county of Cornwall, in the said island of Jamaica, commonly called or known by the several names of Friendship, Greenwich, and Sweet River plantations, and all and every the buildings, lands, tenements, and appurtenances, negro and other slaves, cattle, utensils, and stock, whatsoever, which now are, or shall, at the time of my decease, be therewith severally used, or thereto respectively belonging; and also all my lands, tenements, and hereditaments, whatsoever, situate and being in New England, in North America, and all my estate, right, and interest therein respectively, unto the right honorable Hugh, Lord Viscount Falmouth, the right honorable William Wildman, Lord Viscount Barrington, in the kingdom of Ireland, and Charles Spooner, of the parish of Saint George, Hanover square, in the county of Middlesex, esquire, and their heirs, to the uses, upon the trusts, and for the intents and purposes, and with, under, and subject to the powers, provisoes, and declarations, hereinafter limited, declared, and expressed, of, or concerning the same, (that is to say,) as to, for, and concerning the aforesaid plantation, called Sweet River plantation, and all and every the buildings, lands, tenements, and appurtenances, negro and other slaves, cattle, utensils, and stock whatsoever, which now are, or shall, at the time of my decease, be therewith used, or thereto belonging; and also as to, for, and concerning, all my lands, tenements, and hereditaments whatsoever, situate, lying, and being in New England aforesaid, to the use of my son, Richard Vassall, and his assigns, for and during his life, and from and after the determination of that estate by forfeiture or otherwise during his life, to the use of the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, and their heirs, during the life of the said Richard Vassall, in trust to preserve the contingent uses and estates hereinafter mentioned from being defeated or destroyed, and for that purpose to make entries and bring actions, as occasion shall be or require; but nevertheless, to permit and suffer the said Richard Vassall and his assigns to have, receive, and take the rents, issues, and profits, and produce of the said last mentioned plantation, lands, tenements,

negro and other slaves, cattle, utensils, and stock, hereditaments, and premises, with their appurtenances, to and for his and their own use and uses during his life. And as to, for, and concerning the said plantations called Friendship and Greenwich plantations, and all and every the buildings, lands, tenements, and appurtenances, negro and other slaves, cattle, utensils, and stock whatsoever, therewith respectively used, or thereto respectively belonging, from and immediately after my decease, to the use, intent, and purpose that my daughter, Elizabeth Barrington, (with whom I did advance a considerable portion upon her marriage with the honorable Major General John Barrington, her late husband,) Hester Deere, the wife of Deere, of Cardiff, in the county of Glamorgan, and who is sister to my late wife, Elizabeth Vassall, shall and may, out of all the said two plantations, hereditaments, and premises last mentioned, severally have, receive, and take, yearly and every year during their respective lives, such annual sums or yearly rents as hereinafter mentioned; that is to say, the said Elizabeth Barrington an annual sum or yearly rent of fifty pounds of lawful money of Great Britain, for and during her life; and the said Hester Deere an annual sum or yearly rent of thirty pounds of lawful money as aforesaid, for and during her life, which I mean and intend for her separate use, independent of her husband, and to be paid into her own hands upon her own receipt; each of the said annual sums, or yearly rents of fifty pounds and thirty pounds, to be yearly issuing, and payable out of the same two plantations, hereditaments, and premises last mentioned, and be payable and paid on the Royal Exchange in London, yearly and every year, by four equal quarterly payments, on or at the feasts or days hereinafter mentioned, that is to say, the feast of the annunciation of the blessed Virgin Mary, the nativity of St. John the Baptist, St. Michael the Archangel, and the birth of our Lord Christ, in every year, without any deduction or abatement whatsoever out of the same or any part thereof; the first quarterly payment of the said annual sums or yearly rents of fifty pounds and thirty pounds respectively, to be made on such of said feasts or days as shall first happen after my decease. And as to, for, and concerning all the said two plantations called Friendship and Greenwich, and the buildings, lands, tenements, and appurtenances, negro and other slaves, cattle, utensils, and stock whatsoever therewith respectively used or thereto respectively belonging, subject to the said several annual sums or yearly rents of fifty pounds and thirty pounds, or such of them as shall become payable, to the use of William Dickenson, of Queen Ann street, in the parish of Saint Marylebone aforesaid, and William Smith, of Wimpole street aforesaid, esqrs., their executors, administrators, and assigns, for and during the term of five hundred years, without impeachment of waste, to commence and be computed from my death, and from thenceforth next ensuing fully to be completed and ended, without impeachment of waste; nevertheless, upon the trusts, for the intents and purposes, and subject to the provisoes hereinafter expressed and declared, of and concerning the said term, and from and immediately after the end, ex-

piration, or other sooner determination of the said term of five hundred years, and in the mean time subject thereto, and to the trusts thereof, and to the said several annual sums or yearly rents of fifty pounds and thirty pounds, or such of them as shall become payable to the use of my said son, Richard Vassall, and his assigns, for and during his life; and from and after the determination of that estate by forfeiture or otherwise, in the lifetime of the said Richard Vassall, to the use of the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, and their heirs, during the life of the said Richard Vassall, in trust to preserve the contingent uses and estates hereinafter mentioned from being defeated or destroyed, and for that purpose to make entries and bring actions, as occasion shall be or require; but nevertheless to permit and suffer the said Richard Vassall and his assigns to have, receive, and take the rents, issues, and profits of the said plantations, hereditaments, and premises, to and for his and their own use and uses during his life. And as to, for, and concerning the said two last mentioned plantations, lands, tenements, negro and other slaves, cattle, utensils, stock, hereditaments, and premises, with the appurtenances, from and immediately after the decease of my said son, Richard Vassall, but subject to the said term of five hundred years and the trusts thereof, and the said annual sums or yearly rents of fifty pounds and thirty pounds, or such of them as shall become payable. And also as to, for, and concerning the said plantation called Sweet River plantation, with the lands, tenements, negro and other slaves, cattle, utensils, stock, hereditaments, and premises, with the appurtenances, and the said lands, tenements, and hereditaments, in New England aforesaid, from and immediately after the decease of the said Richard Vassall, to the uses of all and every the son and sons of the body of the said Richard Vassall, begotten or to be begotten, to be equally divided between or amongst said sons, if more than one, share and share alike, and they to take, as tenants in common, and not as joint tenants; and the several and respective heirs male of the body and bodies of all and every such son and sons issuing; and in case of the decease of any such son and sons, (there being more than one,) and failure of such issue male of his or their body or bodies respectively, then, as to the part or share, or parts and shares, of and in the said premises, as well originally belonging to, as accruing or devolving upon, such son or sons, by survivorship, the same shall, from time to time, so often as it shall so happen, go, remain, and enure unto, and to the use of the survivors and survivor, and others and other, of the said sons, and to the heirs male of the bodies and body of such surviving and other son and sons respectively; such surviving and other sons, if more than one, to take also in equal shares, as tenants in common, and not as joint tenants; and if the issue male of all such sons save one shall fail, or if there shall be but one such son, then to such one or remaining son, and the heirs male of his body issuing; and for default of such issue, to the use of the said William Dickenson and William Smith, their executors, ad-

ministrators, and assigns, for and during and unto the full end and term of six hundred years, to commence and be computed from the failure of such issue male of the said Richard Vassall, and from thenceforth fully to be complete and ended, without impeachment of waste, upon the trusts, for the intents and purposes, and under and subject to the provisoes hereinafter declared and expressed, of or concerning the same term; and from and immediately after the end, expiration, or other sooner determination of the said term, and in the mean time subject thereto, and to the trusts thereof, to the use of Elizabeth Vassall, the now only daughter of the said Richard Vassall, and her assigns, for and during her life; and from and immediately after the determination of that estate by forfeiture, or otherwise, during the life of the said Elizabeth Vassall, to the use of the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, and their heirs, during the life of the said Elizabeth Vassall, in trust, by the ways and means before mentioned, to preserve the contingent uses and estates hereinafter mentioned from being defeated or destroyed; but, nevertheless, to permit and suffer the said Elizabeth Vassall, and her assigns, to receive and take the rents, issues, and profits of the said plantations, lands, tenements, negro and other slaves, cattle, utensils, stock, hereditaments, and premises, with their appurtenances, to and for her and their own use or uses during her life; and from and immediately after the decease of the said Elizabeth Vassall, to the use of all and every the son and sons of the said Elizabeth Vassell to be begotten, to be divided between or amongst such sons, if more than one, share and share alike, and they to take as tenants in common and not as joint tenants, and the several and respective heirs male of the body and bodies of all and every such son and sons issuing. And in case of the decease of any such son and sons, there being more than one, and failure of such issue male of his or their body or bodies respectively, then as to the part or share, or parts and shares, of and in the said premises, as well originally belonging to, as accruing or devolving upon, such son or sons, by survivorship, the same shall, from time to time, as often as it shall so happen, go, remain, and enure unto and to the use of the survivors and survivor, and others and other, of the said sons and the heirs male of the bodies and body of such surviving and other son and sons respectively; such surviving and other son, if more than one, to take also in equal shares, as tenants in common and not as joint tenants. And if the issue male of all such sons save one shall fail, or if there shall be but one such son, then to such one, or remaining son, and the heirs male of his body issuing; and for default of such issue, to the use of the second and all and every other daughter and daughters of the body of the said Richard Vassall, begotten or to be begotten, to be equally divided between or amongst such other daughters, if more than one, share and share alike, and they to take as tenants in common and not as joint tenants, and of the several and respective heirs of the body and bodies of all and every such other daughter and daughters issuing. And in case of the de-

cease of any such other daughter or daughters, there being more than one, and failure of issue of her or their body or bodies respectively, then as to the part and share, or parts and shares, of and in the said premises, as well originally belonging to, as accruing or devolving upon, such other daughter or daughters, by survivorship, the same shall, from time to time, so often as it shall so happen, go, remain, and enure unto, and to the use of the survivors and survivor, and others and other of the said other daughters, and the heirs of the body or bodies of such surviving and other daughter and daughters respectively; such surviving and other daughters, if more than one, to take also in equal shares, as tenants in common, and not as joint tenants; and if the issue of all such other daughters of the said Richard Vassall, save one, shall fail, or if there shall be but one such other daughter, then to such one or remaining other daughter, and to the heirs of her body issuing; and for default of such issue, to the use of all and every the daughter and daughters of the said Elizabeth Vassall, to be begotten, to be equally divided between or amongst such daughters, if more than one, share and share alike, and they to take as tenants in common, and not as joint tenants, and of the several and respective heirs of the body and bodies of all and every such daughter and daughters issuing. And in case of the decease of any such daughter or daughters, there being more than one, and failure of issue *or* her or their body or bodies respectively, then as to the part or share, or parts and shares, of and in the said premises, as well originally belonging to, as accruing or devolving upon, such daughter or daughters by survivorship, the same shall, from time to time, so often as it shall so happen, go, remain, and enure unto, and to the use of the survivors and survivor, and others and other of the said daughters, and the heirs of the bodies and body of such surviving and other daughters respectively, such surviving and other daughters, (if more than one,) to take also in equal shares, as tenants in common and not as joint tenants; and if the issue of all such daughters of the said Elizabeth Vassall save one shall fail, or if there shall be but one such daughter, then to such one or remaining daughter and the heirs of her body issuing; and for default of such issue, to the use, intent, and purpose that my said daughter, Elizabeth Barrington, and her assigns may, from thenceforth, have, receive, and take, for and during the then remainder of her life, one clear annual sum, or yearly rent, of two hundred pounds of like lawful money, in lieu of the said annual sum or yearly rent of fifty pounds herein before given to her; the said annual sum or yearly rent of two hundred pounds to be from thenceforth yearly issuing, and payable out of all and every the said plantations, lands, hereditaments, and premises herein before devised, and be payable and paid at the place, upon the days, and in the same manner and proportions, as is herein before directed concerning the other annual sum or yearly rent of fifty pounds. The first payment of the said annual sum or yearly rent of two hundred pounds to be paid on such of the feasts or days herein before mentioned, as shall

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first happen after the decease of my said son, Richard Vassall, and failure of issue by him as aforesaid, and subject and chargeable with the said annual sum or yearly rent of two hundred pounds to the use of my grandson, George Barrington, third son of my said daughter Elizabeth Barrington, and his assigns, for and during his life; remainder to the same trustees and their heirs during his life, to preserve the contingent remainders or remainder, after his decease, to the use of all and every his son and sons in tail male, but if more than one, then they to take as tenants in common in tail male; with cross remainders between them in tail male, in the same manner as is herein before directed or limited with respect to the sons of my said son, Richard Vassall, with remainder to all and every the daughter and daughters of the said George Barrington in tail; but if more than one, then they to take as tenants in common in tail, with cross remainders between them in tail. And for default of such issue to the use of my grandson, Richard Barrington, second son of my said daughter, Elizabeth Barrington, and his assigns, for and during his life, remainder to the same trustees and their heirs during his life, to preserve the contingent remainders, with remainder after his decease, to the use of all and every his son and sons in tail male; but if more than one, then they to take as tenants in common in tail male, with cross remainders between them in tail male in manner before mentioned, with remainder to all and every his daughters and daughter in tail; but if more than one, then they to take as tenants in common in tail, with cross remainders between them in tail; and for default of such issue to the use of my grandson, William Barrington, eldest son of my said daughter, Elizabeth Barrington, and his assigns, for and during his life, remainder to the same trustees and their heirs during his life, to preserve the contingent remainders, with remainder after his decease, to the use of all and every his son and sons in tail male; but if more than one, to take as tenants in common in tail male, with cross remainders between them in tail male in manner before mentioned, with remainder to all and every his daughter and daughters in tail; but if more than one, then they to take as tenants in common in tail, with cross remainders between them in tail; and for default of such issue to the use of my grand daughter, Louisa Barrington, and her assigns, for and during her life, remainder to the same trustees and their heirs during her life, to preserve the contingent remainders, with remainder after her decease, to the use of all and every her son and sons in tail male; but if more than one, then they to take as tenants in common in tail male, with cross remainders between them in tail male, in manner before mentioned, with remainder to all and every her daughter and daughters in tail; but if more than one, then to take as tenants in common in tail, with cross remainders between them in tail; and for default of such issue, to the use of my said daughter, Elizabeth Barrington, and her assigns, for and during her life, remainder to the same trustees and their heirs during her life, to preserve the contingent remainders, with remainder after her decease,

to the use of her fourth and other future sons in tail male, successively, with remainder to her future daughters as tenants in common in tail, with cross remainders between them in tail; and for default of such issue, to the use of my nephew, Rose Hering May, and his assigns, for and during his life, remainder to the same trustees and their heirs during his life, to preserve the contingent remainders, with remainder after his decease, to the use of all and every his son and sons in tail male; but if more than one, then they to take as tenants in common in tail male, with cross remainders between them in tail male, in manner before mentioned, with remainder to all and every his daughter and daughters in tail; but if more than one, then they to take as tenants in common in tail, with cross remainders between them in tail; and for default of such issue, to the use of the minister and church wardens, for the time being, of the said Parish of Westmoreland, in the said island of Jamaica, and their successors forever, in trust for the use of a charity school to be built on my said estate there, called Friendship and Greenwich, to be endowed, kept up, and supported by and out of the produce thereof, in such manner, and under and subject to such regulations and orders as shall from time to time be directed and made by the assembly of the said island for the time being: Provided always, and my will and mind nevertheless, is, that it shall and may be lawful, to and for, and I do hereby accordingly request and desire, the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, and the survivors and survivor of them, and the heirs of such survivor, from time to time, as there shall be occasion, by and out of the rents, issues, profits, and yearly produce of the said plantations, called Friendship and Greenwich, to buy in such negroes, cattle, utensils, and other stock, and things, as shall be proper and necessary for the improvement of the estates and premises, and for keeping up the number and quantity of slaves, cattle and other stock thereon, so that there shall always be the number of five hundred slaves, and quantity of cattle and other stock in proportion, upon my said estates called Friendship and Greenwich. Provided, also, and my will and mind nevertheless likewise is, that it shall and may be lawful to and for the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, and the survivors and survivor of them, and the heirs of such survivor, from time to time to employ, and authorize, and empower any person or persons, as he or they in their discretion shall think most fit, to be attorney or attorneys, manager or managers, of the said plantations, estates, and effects, in the said island of Jamaica, other than Sweet river plantation, during the life of the said Richard Vassall, and to be aiding and assisting to them, the said trustees or trustee, in, about, or relating to the trust hereby in them reposed; but do recommend that my said son, Richard Vassall, may be always one of said attorneys or managers, and whilst he continues in Jamaica, the only such attorney or manager, unless my said trustees for the time being shall in their discretion think otherwise; and such attorneys or managers, or any of them, from time

to time to remove, and to place or put others in their room or stead, as to my said trustees for the time being shall be thought most fit and expedient, and pay and allow, out of the rents, issues, profits, and produce of the said hereditaments and premises, to such person and persons respectively as shall be so employed, authorized, and empowered for any of the purposes aforesaid, such sum and sums of money by way of salary, in lieu of wages, and all other allowances, (and not by way of commissions,) for his and their trouble and expenses, as they, the said trustees or trustee for the time being, shall think fit. And as to the said term of five hundred years, herein before given or limited to the said William Dickenson and William Smith, their executors, administrators, and assigns, I declare that the same is so given or limited to them, upon the trusts, and for the intents and purposes, and with and subject to the powers, provisoes, and declarations hereinafter mentioned, that is to say, upon trust that they, the said William Dickenson and William Smith, and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, after my decease, receive and take out of the rents, issues, profits, and produce of the same plantations, lands, tenements, hereditaments, and premises, comprised in the said term of five hundred years, the clear yearly sum of two hundred pounds, of lawful money of Great Britain, during the joint lives of my daughter, Anna Maria Russell, and William Henry Russell, her husband, and pay the same into the proper hands of my said daughter, Ann Maria Russell, wherever she shall then be, and not to any other person whatsoever, on the four several feasts or days herein before mentioned, by even and equal quarterly portions, free and clear of and from all parliamentary and other taxes, payments, and deductions whatsoever; the first quarterly payment of the said yearly sum of two hundred pounds to be made on such of the said feasts or days as shall first and next happen after my decease; and the said yearly sum of two hundred pounds to be for my said daughter, Anna Maria Russell's, peculiar expense, and for her sole and separate use and disposal, free from the power or control of the said William Henry Russell, her husband, and wherewith he shall in no wise intermeddle; and the receipt and receipts of the said Anna Maria Russell, signed with her own hand, and of no other person or persons whomsoever, shall, notwithstanding her coverture, be sufficient discharge and discharges for the said yearly sum of two hundred pounds, or so much thereof as in and by such receipt and receipts shall be acknowledged or expressed to be received: Provided, always, and as the said provision or yearly sum of two hundred pounds is intended for the maintenance and support of my said daughter, and to supply her own immediate occasions, I do hereby expressly will and declare, that if the said Anna Maria Russell shall, under any pretence whatsoever, alienate, sell, or dispose of the said yearly sum of two hundred pounds, or any part thereof, that then, and in such case, the payment of the said yearly sum of two hundred pounds shall from thenceforth cease and determine in such and in the

like manner as if the said Anna Maria Russell was naturally dead; any thing in this my will before contained to the contrary thereof in any wise notwithstanding. And upon further trust that they, the said William Dickenson and William Smith, and the survivor of *of* them, and the executors, administrators, and assigns of such *such* survivor, do and shall, after my decease, by and out of the rents, issues, produce, and profits of the said plantations, lands, tenements, hereditaments, and premises, comprised in the said term of five hundred years, or by mortgage, sale, or other disposition of the same plantations, lands, tenements, hereditaments, and premises, comprised in the said term of five hundred years, or by mortgage, sale, or other disposition of the same plantations, lands, tenements, hereditaments, and premises, or any part or parts thereof, for all or any part of the said term of five hundred years, or by all or any of the said ways and means, or by any other ways and means which he or they shall, in his or their discretion, think fit; but subject, nevertheless, and without prejudice, to the said annual sum of two hundred pounds, and to the several annuities or yearly sums of fifty pounds and thirty pounds by this my will devised and given as aforesaid, levy and raise the sum of five hundred pounds, of lawful money of Great Britain, for the portion and portions of each and every child of my said daughter, Anna Maria Russell, by the said William Henry Russell, her husband, begotten or to be begotten, as and when every such child shall be respectively born, or in case any such child or children shall be born in my lifetime, then immediately after my decease. And I will and direct, that all and every the sum and sums of money so to be levied and raised for the portion and portions of the children of my said daughter, by the said William Henry Russell as aforesaid, shall, as and when the same shall be so levied or raised by the said trustees, [be] placed out or invested in the purchase of real securities, or parliamentary funds, or public stocks, at interest, in their joint names, who, from time to time, may call in such moneys so lent out on securities, or sell the said parliamentary funds or public stocks, and place and lend out the money, so to be called in or to arise from such sale, again, upon the like securities, at interest. And my will is, that the said trustees, and the survivor of them, and the executors or administrators of such survivor, shall stand and be possessed of and interested in the said several sums of five hundred pounds, so to be levied and raised as aforesaid, and the securities to be purchased therewith respectively, in trust and for the benefit of the said children of my said daughter, Anna Maria Russell, by the said William Henry Russell, to be paid or transferred to him, her, or them, at such time or times as are hereinafter mentioned, that is to say, to such child or children as shall be a son or sons, at his or their ages of twenty-one years, or sooner for his or their preferment or advancement, as they, the said trustees, or the survivors of them, or the executor or administrator of such survivor, shall think fit; and to such child or children as shall be a daughter or daughters, at her or their age or ages of twenty-one years, or day or days of marriage, which shall respectively first happen; and upon trust, in the mean time, to ap-

ply and dispose of the interest, dividends, and annual produce of the said stocks, funds, and securities in, for, or towards the maintenance and education of such child or children in proportion to his, her, or their apparent share or shares and interest of and in the capital of the said stocks, funds, and securities; provided, always, and my will further is, that if any one or more of such children, being a son or sons, shall depart this life before he or they shall attain his or their age or ages of twenty-one years respectively, and being a daughter or daughters, shall die before she or they shall attain her or their age or ages of twenty-one years respectively, without having been married, then the said portion and portions of such child or children, or so much thereof as shall not have been sooner advanced as aforesaid, shall go and accrue to the survivors and survivor of such children, and be equally divided between or amongst them, if more than one, share and share alike; and the same shall go in such and the same manner, and be paid and transferable at such time or times to such surviving or other child or children, or his, her, or their original portion or portions; and in case any other of the said children, being a son or sons, shall depart this life before he or they shall attain his or their age or ages of twenty-one years respectively, and being a daughter or daughters, shall die before she or they shall attain her or their age or ages of twenty-one years respectively, without having been married, then his, her, and their share and shares of and in such portion or portions, shall again from time to time survive, accrue, and go together with her or their original portion or portions to the then survivors or survivor, or others or other of such children, and shall be paid and transferred at such time or times as his, her, or their original share or shares of the said portions, shall, by virtue of this my will, become payable or transferred as aforesaid: Provided, also, and my will further is, that if there shall be any such child or children of my said daughter, Anna Maria Russell, by the said William Henry Russell, her husband, and they shall all die before his, her, or their portion or portions shall, according to the true intent and meaning of this my will, vest and be and become payable or transferable, then and in such case I will and direct, that the said trustees for the time being shall from thenceforth stand and be possessed of the stocks, funds, and securities in which such portion and portions shall have been placed out or invested in trust for my said son, Richard Vassall, his executors, administrators, and assigns, and do and shall assign and transfer the same to him or them accordingly. And upon this further trust, in case my said daughter, Anna Maria Russell, shall survive the said William Henry Russell, her present husband, then that they, the said William Dickenson and William Smith, and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, after the decease of the said William Henry Russell, receive and take out of the rents, issues, profits, and produce of the said plantations, lands, tenements, hereditaments, and premises, the clear yearly sum of three hundred pounds of like lawful money of Great Britain, (in lieu of the aforesaid yearly sum of two hundred pounds,)

during the then remainder of the life of the said Anna Maria Russell, and pay the same into the proper hands of the said Anna Maria Russell, on the four usual feasts or days in the year herein before mentioned, by even and equal quarterly portions, free and clear of and from all parliamentary and other deductions whatsoever. The first quarterly payment of the said yearly sum of three hundred pounds to be made on such of the said feasts or days herein before mentioned as shall first and next happen after the decease of the said William Henry Russell. The said yearly sum of three hundred pounds to be likewise for my said daughter's peculiar expenses, and for her sole and separate disposal, free from the power or control of any after taken husband, and wherewith he shall in no wise intermeddle; and the receipt and receipts of my said daughter, signed with her own hand, and of no other person or persons whomsoever, shall, notwithstanding her future coverture, be sufficient discharge or discharges for the said yearly sum of three hundred pounds, or so much thereof as in and by such receipt and receipts shall be acknowledged or expressed to be received; and whereas the said yearly rent of three hundred pounds is intended as a permanent provision for my said daughter during the remainder of her life, in case she shall survive her present husband, I do hereby likewise expressly will and declare, that if my said daughter shall, under any pretence whatsoever, alienate, sell, or dispose of the said yearly sum of three hundred pounds, or any part thereof, that then and in such case the payment of the said yearly sum of three hundred pounds shall, from thenceforth, cease, end, and determine in such and the like manner as if the said Anna Maria Russell was then naturally dead; and upon further trust, that in case my said daughter, Anna Maria Russell, shall survive the said William Henry Russell, her present husband, and shall afterwards marry again with the previous consent, in writing, of the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, or the survivors or survivor of them, or the executor or administrator of such survivor, or the major part of them, for the time being, that then and in such case, but not otherwise, the said William Dickenson and William Smith, or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, after the decease of the said Anna Maria Russell, by and out of the rents, issues, profits, and produce of the said plantations, lands, tenements, hereditaments, and premises comprised in the said term of five hundred years, or by mortgage, sale, or other disposition of the same plantations, lands, tenements, hereditaments, and premises, or any part or parts thereof, for all or any part of the said term of five hundred years, or by all or any of the said ways and means, or by any other ways or means which he or they shall, in his or their discretion, think fit, but subject, nevertheless, and without prejudice, to the said several annual sums or yearly rents herein before given, levy, and raise the sum of ten thousand pounds of lawful money of Great Britain, for the portion or portions of all, every, the child and children of the said Anna Maria Russell, by any after taken husband,

to be paid to such last mentioned child or children at such time or times, and if more than one, in such share or proportions as hereinafter mentioned, (that is to say,) if there shall be only one such child, then the said sum of ten thousand pounds to be paid and payable to such one child, being a son, at his age of twenty-one years, or the same or any part thereof to be sooner paid or applied for his preferment or advancement, as they, the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, shall think fit, the said Anna Maria Russell being then dead; and being a daughter, at her age of twenty-one years, or day of marriage, which shall first happen to be after the decease of the said Anna Maria Russell; but if such one child, being a son, shall attain his said age of twenty-one years, or being a daughter, shall attain her said age of twenty-one years, or be married in the lifetime of the said Anna Maria Russell, then to be paid within twelve calendar months after her decease, together with interest for the same, after the rate of four pounds for one hundred pounds for a year from the death of the said Anna Maria Russell; and if there shall be two or more such children, then the said sum of ten thousand pounds to be paid and payable to such two or more children, and to go unto, and to be shared and divided between or amongst all such children equally, share and share alike, and to be paid and payable in manner following, that is to say, the share and shares of such of them as shall be a son or sons to be paid to him or them at his or their age or ages of twenty-one years, or sooner for his or their preferment or advancement, as they, the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, shall think fit, the said Anna Maria Russell being then dead; and the share or shares of such of them as shall be a daughter or daughters, to be paid to her or them at her or their age or ages of twenty-one years, or day or days of marriage, which shall respectively first happen after the decease of the said Anna Maria Russell; but if any such child or children, being a son or sons, shall have attained his or their age or ages of twenty-one years, or being a daughter or daughters, shall have attained her or their age or ages of twenty-one years, or be married in the lifetime of the said Anna Maria Russell, then the share or shares of such child or children, being a son or sons so attaining such age, and being a daughter or daughters so attaining such age, or marrying as aforesaid, shall be raised and paid within twelve calendar months next after the decease of the said Anna Maria Russell, with interest for the same after the rate of four pounds for one hundred pounds for a year from the day of her death; provided, that, notwithstanding the postponing the payment of such portion and portions as aforesaid, until after the death of the said Anna Maria Russell, all and every such portion and portions shall, nevertheless, be and be deemed and considered as vested interest in such of the said children, being a son or sons, as shall attain to his

or their age or ages of twenty-one years respectively; and being a daughter or daughters shall attain that age, or be married in the life-time of the said Anna Maria Russell; provided, also, that if any one or more of such children, being a son or sons, shall depart this life before he or they shall attain his or their age or ages of twenty-one years respectively, and being a daughter or daughters, shall die before she or they shall attain her or their age or ages of twenty-one years respectively, without having been married, then the said portion or portions herein before provided for such child or children so dying as aforesaid, or so much thereof as shall not have been sooner advanced as aforesaid, shall go and accrue to the survivors and survivor, and others and other of such children, and be equally divided between or amongst them, if more than one, share and share alike; and the same shall go in such and the same manner, and be paid and payable at such time or times, to such surviving or other child or children, as his, her, or their original portion or portions; and, in case any other of the said children, being a son or sons, shall depart this life before he or they shall attain his or their age or ages of twenty-one years, respectively; being a daughter or daughters, shall die before she or they shall attain her or their age or ages of twenty-one years, respectively, without having been married, then his, her, and their share and shares, of and in such portion and portions so directed to survive as aforesaid, shall again, from time to time, survive, accrue, and go, together with his, her, or their original portion or portions, to the survivors and survivor, or others and other of such children, and shall be paid and payable at such time or times as his, her, or their original share or shares of the said sum of ten thousand pounds shall, by virtue of this my will, become payable; and upon this further trust, that they, the said William Dickenson and William Smith, and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, whether the said Anna Maria Russell be living or dead, but subject and without prejudice as aforesaid, by and out of the rents, issues, profits, and produce of the said plantations, lands, tenements, hereditaments, and premises comprised in the said term of five hundred years, or any part or parts thereof, or by any other the ways and means aforesaid, levy and raise such annual sum and sums of money for the maintenance and education of such child or children until his, her, or their portion or portions shall become payable, respectively, as they, the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, or the survivor or survivors of them, or the executors, administrators, or assigns of such survivor, shall in his or their discretion think fit, not exceeding the sum of one hundred pounds a year for any one child, nor in any case the interest of the portion and portions of such child or children, after the rate of four pounds for one hundred pounds for a year; the said annual sum or sums for maintenance to be free and clear of and from all taxes, charges, assessments, impositions, deductions, or abatements whatsoever, and to be paid quarterly, at or upon the feasts or days herein before mentioned, in every year. And upon this further

trust, that they, the said William Dickenson and William Smith, and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, after my decease, receive and take, out of the rents, issues, profits, and produce of the said plantations, hereditaments, and premises comprised in the said term of five hundred years, the further clear yearly sum of one hundred pounds, of like lawful money of Great Britain, during the life of a certain youth, called Phœnix Felton, now on the foundation of Westminster school, and pay the same unto the said Phœnix Felton, on the four several feasts or days herein before mentioned, by even and equal quarterly portions, free and clear of and from all parliamentary and other taxes, payments, and deductions whatsoever; the first quarterly payment of the said last mentioned yearly sum of one hundred pounds to be made to the said Phœnix Felton on such of the said feasts or days as shall first and next happen after my decease: Provided, always, and as the said provision or yearly sum of one hundred pounds is intended for the maintenance and support of the said Phœnix Felton, I do hereby expressly will and declare, that if the said Phœnix Felton shall, under any pretence whatsoever, alienate, sell, or dispose of the said yearly sum of one hundred pounds, or any part thereof, other than to my said son, Richard Vassall, that then, and in such case, the payment of the said yearly sum of one hundred pounds shall from thenceforth cease, end, and determine in such and the like manner as if the said Phœnix Felton was naturally dead; and, although I have not, nor do mean absolutely to restrain the said Phœnix Felton from selling the said yearly sum of one hundred pounds, or any part thereof, unto my son Richard Vassall, yet I do rely, and most earnestly request, of my said son Richard Vassall, not to purchase the said yearly sum of one hundred pounds, or any part thereof, from the said Phœnix Felton, at less than the sum of two thousand pounds for the whole, or in that proportion for any part thereof. And my said son, Richard Vassall, will not purchase the said yearly sum of one hundred pounds, or any part thereof, from the said Phœnix Felton, unless the said Richard Vassall shall be satisfied and convinced that such purchase will be for the immediate benefit and advantage of the said Phœnix Felton; provided, also, that, in case the said Phœnix Felton shall not have attained his age of twenty-one years at the time of my decease, then I will that he shall be paid or allowed eighty pounds a year, and no more, during his minority. And upon further trust that they, the said William Dickenson and William Smith, and the survivor of them, and the executors or administrators of such survivor, do and shall permit and suffer the residue and surplus of the rents, issues, profits, and annual produce of the plantations, hereditaments, and premises, comprised in the said term of five hundred years, which shall remain after, and shall not be applied in, for, or towards the execution and performance of the trusts of the same term to be had, received, and taken by the person and persons to whom the reversion or remainder of the same premises immediately expectant on the determination of the same term shall, by virtue of

the uses and estates herein before limited for the time being, belong or appertain: Provided, always, that when all the trusts, herein before declared of and concerning the same term, shall have been executed and performed, or shall become unnecessary, and the costs and charges of the trusts of the same term shall have been paid and satisfied, that then, and from thenceforth, the said term of five hundred years shall cease, determine, and be absolutely void. And as to the said term of six hundred years herein before given or limited to the said William Dickenson and William Smith, their executors, administrators, and assigns, as aforesaid, I declare that the same is so given or limited to them, upon the trusts, and for the intents and purposes, and with and subject to the powers, provisoes, and declarations hereinafter mentioned, (that is to say,) in case at the time of the death of the said Richard Vassall, there shall be no issue male of his body begotten living, or afterwards born alive, or there being such issue male, all of them shall die without issue male before any of them shall attain the age of twenty-one years, and there shall happen to be one or more younger daughter or daughters of the said Richard Vassall at the time of failure of such issue male, or at any time afterwards, then the said William Dickenson and William Smith, and the survivor of them, and the executors or administrators of such survivor, do and shall, after the decease of the said Richard Vassall, by and out of the rents, issues, profits, and produce of the said plantation, lands, slaves, hereditaments, and premises herein before devised, or intended so to be, or by mortgage, sale, or other disposition of the same, or any part or parts thereof, for all or any part of the said term of six hundred years, or by all or any of the ways or means before mentioned, which he or they shall, in his or their discretion, think fit; but subject, nevertheless, and without pre udice, to the aforesaid several rents or annual sums herein before mentioned, and the said term of five hundred years, and the trusts thereof, levy and raise such sum and sums of money, for the portion and portions of the said younger daughter and daughters of the said Richard Vassall as is hereinafter mentioned, (that is to say,) if one younger daughter only, the sum of ten thousand pounds sterling; if two younger daughters, the sum of twelve thousand pounds sterling, equally between them; and if three or more younger daughters, the sum of fifteen thousand pounds, equally amongst them; the said portions to be paid to such younger daughter and daughters at their respective ages of twenty-one years, or days of marriage, which shall first happen after the decease of the said Richard Vassall; but if any of the said younger daughters shall attain the age of twenty-one years, or be married in the lifetime of the said Richard Vassall, then the portion and portions of such younger daughter and daughters shall be paid to her or them respectively within three months after the decease of the said Richard Vassall; and upon further trust, that after the death of the said Richard Vassall, and in the mean time, and until such portion or portions shall become respectively payable, as aforesaid, the said William Dickenson and William Smith, and the survivor of them, and the executors or administrators of

such survivor, do and shall, by and out of the rents, profits, and produce of the hereditaments and premises comprised in the said term of six hundred years, raise and levy such yearly sum and sums of money for the maintenance of such younger daughter or daughters as they, or the survivor of them, or the executors or administrators of such survivor, shall in their or his discretion think fit. Yet so, nevertheless, that none of the said younger daughters shall have more than one hundred pounds a year for their respective maintenance, until they shall respectively attain their ages of fifteen years, nor afterwards more than will be equivalent to the interest of her or their respective portion or portions, after the rate of three pounds by the hundred pounds for a year, until their respective portions shall become vested, and then after the rate of four pounds per centum per annum, until raised and paid: Provided, always, that if any of the said younger daughters shall happen to die before her or their portion or portions shall become payable by virtue of this my will, then the portion or portions of her or them so dying shall go, accrue, and be paid to, and equally divided between, the surviving younger daughter or daughters, when her or their original portion and portions shall become payable. Yet so, nevertheless, as in that case there be but three such surviving younger daughters, they shall have no more than the sum of fifteen thousand pounds amongst them; and if only two such surviving younger daughters, no more than the sum of twelve thousand pounds between them; and if only one such surviving younger daughter, then no more than the sum of ten thousand pounds, by virtue of this my will; provided, also, that no sale or mortgage for raising such portion or portions, as aforesaid, shall be made until some one of the said portions shall become payable by virtue of this my will; provided, also, that in case there shall be no such younger daughter or daughters, or there being such, all of them shall happen to die before any of their portions shall become payable, then upon further trust that the said William Dickenson and William Smith, and the survivor of them, and the executors and administrators of such survivor, do and shall, by the ways and means aforementioned, levy and raise out of the said premises, comprised in the said term of six hundred years, the sum of two thousand pounds, of lawful money of Great Britain, for the benefit of such of the younger children of my said daughter, Elizabeth Barrington, as shall be living at the time of *my* decease of the said Richard Vassall, to be equally divided between them, if more than one, share and share alike; and if there shall be but one such younger child then living, then the whole to such surviving younger child; and upon further trust, that they, the said William Dickenson and William Smith, and the survivor of them, and the executors or administrators of such survivor, do and shall permit or suffer the residue and surplus of the rents, issues, and profits of the plantations, hereditaments, and premises, comprised in the said term of six hundred years, which shall remain after, and shall not be applied in, for, or towards the execution and performance of the trusts of the same term to be had, received, and taken by the person and persons to whom

the reversion or remainder of the same premises immediately expectant on the determination of the same term shall, by virtue of the uses and estates herein before limited for the time being, belong or appertain; provided, always, that when all the trusts herein before declared of and concerning the same term shall have been executed and performed, or shall become unnecessary, and the costs and charges of the trustees of the said term shall have been paid and satisfied, that then, and from thenceforth, the said term of six hundred years shall cease, determine, and be absolutely void; provided, also, and I do hereby, nevertheless, will and declare, that it shall and may be lawful to and for my said son, Richard Vassall, by any deed or deeds, writing or writings, to be by him sealed and delivered in the presence of two or more credible witnesses, to grant, limit, or appoint, unto or to the use of his present wife, and also unto or to the use of such woman or women whom the said Richard Vassall may, after the decease of his said present wife, marry or take to wife, for her or their life or lives, in nature of a jointure or jointures for her or them, and in bar of her or their dower, any yearly rent or annual sum, tax free, and without any deduction to be issuing out of and chargeable upon all or any part of the said premises, plantations, lands, tenements, negro and other slaves, hereditaments, and premises, hereby devised, and to be paid quarterly on the four most usual feasts or days of payment in the year, and with such powers and remedies for the recovering such rent or annual sum when in arrear, and such term of years for better securing the due payment thereof, to take effect immediately after the decease of the said Richard Vassall, as to him, the said Richard Vassall, shall seem meet, so as such yearly rent or annual sum so to be granted, limited, or appointed, be likewise subject, and without prejudice, to the said several annual sums of fifty pounds and thirty pounds, or to any of the trusts herein declared of and concerning the said term of five hundred years; and yet so, nevertheless, as that the rent or annual sum so to be granted, limited, or appointed, to or to the use of such present or any future wife or wives, by virtue of this power, do not, nor shall not, exceed in the whole the yearly rent or annual sum of four hundred pounds, tax free.

And my further will is, and I do hereby also declare, that it shall and may be lawful, to and for my said son, Richard Vassall, at any time or times during his life, in case he shall have any son or sons, by indenture under his hand and seal, or by his last will and testament in writing, to be by him signed and published in the presence of two or more credible witnesses, to charge all or any part of the said plantations and premises herein before devised, with the payment of any sum or sums of money not exceeding fifteen thousand pounds in the whole, for the portion or portions of the daughter or daughters of him, the said Richard Vassall, begotten, or to be begotten, to be paid in such shares and proportions, and at such time or times, as the said Richard Vassall shall think fit, and to make any lease or leases, mortgage or mortgages, of the same premises, or any part thereof, for the raising and paying such sum and sums of money as shall be charged as aforesaid; and that the

same premises, so to be leased or mortgaged, shall stand charged and chargeable with such sum and sums of money, respectively, and with such demises or mortgages, to be made as aforesaid, for raising or securing the same, so as such charge or charges so to be made by the said Richard Vassall, be likewise subject, and without prejudice, to any of the trusts herein declared of and concerning the said term of five hundred years. And yet, so, nevertheless, as that the portion for any one daughter do not, or shall not, exceed the value of the son's respective shares in the said estates, such value to be ascertained and fixed by the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, or the survivor or survivors of them, or the heirs of such survivor; provided, always, and my further will is, that all and every person and persons to whom my said plantations and estates shall come or descend by virtue of this my will, or of any devise or limitation herein contained, shall and do, when and so soon as they shall respectively come into the actual possession thereof, or any part thereof, take and forever afterwards, upon all occasions, use the sirname of Vassall only, next and immediately after their own and respective christian names, and in default or neglect thereof by any of them, being of the age of twenty-one years, the said devise or limitation of my said estates to such person so refusing or neglecting, shall immediately, upon such refusal or neglect, go to, and become vested in, the person or persons who would be next entitled thereto under this my will, in case the person or persons so refusing or neglecting was naturally dead; provided, likewise, and my further will is, that it shall and may be lawful to and for the said George Barrington, Richard Barrington, William Barrington, and Rose Hering May, respectively, as and when they shall respectively come into, and be in the actual possession of the premises herein before devised, or any part thereof, by any deed or writing, or deeds or writings, under their respective hands and seals, attested by two or more credible witnesses, to grant, limit, or appoint, unto or to the use of any woman or women with whom they shall respectively intermarry, either before or after such marriage, for the life or lives of such woman or women, in the nature of a jointure or jointures, or in part of a jointure for her or them, any rent or annual sum, tax free, and without any deduction, to be issuing out of and chargeable upon all or such part of the said plantations, lands, tenements, negro and other slaves, hereditaments, and premises, whereof they shall respectively be so then in the actual possession, and to be paid quarterly on the four most usual feasts or days of payment in the year, and with powers and remedies for the recovering such rent or annual sum when in arrears, and such term of years, for better securing the due payment thereof, as to them respectively shall seem meet, so that such grant, limitation, and appointment be made with the approbation and consent in writing of the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, or the survivors or survivor of them, or the heirs of such survivor. Yet so, nevertheless, as that the same do not, or shall not,

exceed the amount of one-third part of the usual nett yearly produce of the estates then in their respective possession, such annual value to be ascertained and fixed by the said last mentioned trustees for the time being, and so that not more than one such yearly rent or annual sum be subsisting at one and the same time. And I give and devise unto my brother-in-law, John Foster Barham, esquire, and the sons of my late brothers-in-law, William Foster and Samuel Foster, deceased, or such of them as at the time of my decease shall be seized of, or entitled to, the plantations or sugar works hereinafter mentioned, severally and respectively, and to their several and respective heirs and assigns forever, all such and so much of my lands in the parish of St. Elizabeth, in the said island of Jamaica, as are adjoining or near unto, and within the compass or distance of one mile from all or any the several estates and sugar works of my said brothers-in-law and nephews, respectively, called Elm, Dawkins, Lancaster, Two Mile Wood, and the Island, such and so much thereof (if any such there be) as lies adjoining or near unto any two or more of the said five several estates or sugar works, to be equally divided between such of my said brothers-in-law or nephews, to whom such estates or sugar works shall respectively belong; and in case any of them shall die in my lifetime, then I give the part and share, parts and shares, of him or them so dying unto his or their heirs forever. And I give all the diamonds and trinkets of my late wife unto my said son Richard Vassall, in trust for his daughters begotten, or to be equally divided between them if more than one, share and share alike; or if there shall be but one such daughter, then the whole to such only daughter; and in case this gift shall not be altered by me by any codicil, then I desire my son Richard Vassall to pay to the said Hester Deere and her children, in such shares and proportions as he in his discretion shall think fit, the sum of five hundred pounds, by five instalments of one hundred pounds each, yearly. And I give unto the said Hugh, Lord Viscount Falmouth, one hundred guineas for a ring, which I beg his lordship's acceptance of. And I nominate and appoint the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, and Charles Spooner, executors of this my will. And I do desire the said William Wildman, Lord Viscount Barrington, and Charles Spooner, to accept of the sum of fifty pounds each for a ring.

And as to the rest and residue of my personal estate, not herein before specifically devised, which shall remain after payment of my debts and funeral expenses, and such legacies as I have given by this my will, or as I shall at any time or times hereafter give by any codicil or codicils thereto, I give and bequeath the same, and all my estate, right, and interest therein, unto, and to the use of my said son, Richard Vassall, to and for his own absolute use and benefit forever. And my will further is, and I declare and direct, that the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, Charles Spooner, William Dickinson, and William Smith, or any of them respectively, their or any of their respective heirs, executors, administrators, or assigns,

shall not be charged with, or answerable or accountable for, any sum or sums of money whatsoever, other than such only as by virtue of, or in pursuance of, this my will, shall be actually received by, or come to their or his hands respectively, and shall not be answerable or accountable the one for the other or others of them, or for receipts, payments, acts, or wilful defaults of the other or others of them, but each of them for himself, and for his own receipts, payments, acts, and wilful defaults only, their joining in any receipt or receipts for the sake of conformity notwithstanding, or with *or with* or for any loss or damage which may happen by or through the neglect, default, or failure of any attorney or attorneys, manager or managers, as shall be so employed, authorized, or empowered as aforesaid, or by depositing any sum or sums of money or effects which by virtue of this my will shall come to their or any of their hands in any bank or bankers, or merchants' hands, or elsewhere for safe custody, or for any loss or damage which may happen in or about or relating to the said trusts or powers, or any of them, or the management or execution thereof, or the executorship of this my last will, without his or their wilful neglect or default; and they, the said Hugh, Lord Viscount Falmouth, William Wildman, Lord Viscount Barrington, Charles Spooner, William Dickenson, and William Smith, and every of them, their and every of their executors, administrators, and assigns respectively, may from time to time deduct and retain in his or their hands, and reimburse him and themselves, and pay to his and their co-trustee and trustees respectively, out of all or any of the moneys which by virtue of this my will, or any of the trusts or powers aforesaid, shall be received by, or come to their or any of their hands respectively, all such costs, charges, damages, and expenses, as he or they, or any of them, shall pay, sustain, or be put unto, in, or about, or relating to any of the trusts or powers aforesaid, or otherwise by reason of this my will. And lastly, I do revoke and make void all former wills or testamentary dispositions by me at any time heretofore made, and declare this only to be my last will and testament. In witness whereof I, the said Florentius Vassall, have hereunto, and also to a duplicate hereof, set my hand and seal, the day and year first above written.

FLO. VASSALL [L. S.]

Whereupon, the tenant produced, and gave in evidence a statute made and passed by the legislature of the State of Maine, and duly approved by the Governor thereof, on the eleventh day of August, in the year one thousand eight hundred and forty-eight, which is in the words and figures following, to wit:

An act, in addition to the one hundred and forty-seventh chapter of the revised statutes.

Sec. 1. No real or mixed action for the recovery of any lands in this State shall be commenced or maintained against any person in posession of such lands, where such person or those under whom he claims have been in actual possession for more than forty years, and claiming to

hold the same in his or their own right, and which possession shall have been adverse, open, peaceable, notorious, and exclusive.

Sec. 2. This act shall take effect at the end of one day, from and after its approval by the governor.

And the tenant thereupon claimed that, by force of the said statute, the demandant was debarred from further maintaining his said action against said tenant.

And thereupon the demandant produced and gave in evidence the first article and tenth section of the constitution of the State of Maine, which is in the words and figures following, to wit:

Private property shall not be taken for public uses without just compensation, nor unless the public exigencies require it.

And thereupon the demandant claimed that the said statute was void and of no effect, because it was in violation of the said article and section of the constitution of the State of Maine, and was not lawfully applicable to the present action; and because it was retrospective in its operation on vested rights of the demandant; and also because it was in violation of the Constitution of the United States, as being an act impairing the obligation of contracts. All which being heard, the demandant's counsel prayed the court to instruct the jury as follows:

1. That the act of the legislature of Maine, of the year 1848, ch. 87, is not applicable to any case in which the title of the demandant had accrued before the passage of said act.

2. That said act is not applicable to the present action, the same having been commenced before the passage of said act.

3. That said act is void, because it is in violation of the constitution of the State of Maine, article 1, sec. 21, and because it is retrospective in its operation upon vested rights of the demandant.

4. That said act is void, because it is in violation of the Constitution of the United States, as being a law impairing the obligation of contracts.

5. That by the true and legal construction of the will of Florentius Vassall, said Elizabeth Vassall took only an estate for life in the demanded premises.

6. That by the true and legal construction of the will of Florentius Vassall, the demandant took a remainder in tail male, as tenant in common with said Henry Edward Fox, in the demanded premises expectant on the life estate of said Elizabeth Vassall.

7. That the demandant is not barred from recovering one undivided half of the demanded premises by the statutes of limitation of the States of Maine or Massachusetts, or any of them.

8. That if the demandant shows a right to recover one undivided half of the demanded premises, he may recover the same under the writ in this case, although he therein demands the whole of said demanded premises.

9. That it is not necessary, for the purpose of enabling the demand-

ant to recover in this action, that he should have taken the name of Vassall.

F. DEXTER and
E. H. DAVEIS,
Counsel for Henry Webster.

But the honorable judges, who presided at the said trial, declined to give to the jury any of the said instructions so prayed for by the demandant's counsel; but, on the contrary thereof, did instruct the jury, that by the true and lawful construction of the said will of Florentius Vassall, no legal estate in the demanded premises, or any part thereof, was ever vested in the demandant, but that, if the legal estate in the demanded premises was, and by force and effect of the said will, vested in any person or persons, it was thereby vested and continued to be in the trustees named in said will, viz., Lord Viscount Falmouth, Lord Viscount Barrington, and Charles Spooner, esquire, the survivors and survivor of them, and the heirs of such survivor; and that, therefore, the demandant could not maintain the present action to recover the same, and that it was, therefore, unnecessary to instruct the jury upon the other points mentioned in the demandant's prayer for instructions; whereas the said counsel for the demandant respectfully insist that the said judges ought not so to have instructed the jury, but ought to have instructed them upon the matters and in the manner prayed for by the said counsel as aforesaid; and they did, therefore, except in law to the said instruction and said refusal of the said judges; and, inasmuch as the several matters aforesaid do not appear by the record of said verdict, the said counsel have made and tendered to the said judges this their bill of exceptions, and pray that the same may be allowed.

All which being considered, and found conformable to the truth of the case, the presiding judge has allowed this bill of exceptions, and hath thereto put his seal, this 28th day of April, in the year one thousand eight hundred and fifty-one.

LEVI WOODBURY, [SEAL.]
Asso. Jus. Sup. Ct.

F. DEXTER and
E. H. DAVEIS, *counsel for Henry Webster.*

A true copy. Attest:

GEO. F. EMERY, *Clerk.*

MAINE DISTRICT, *ss.*

First circuit, office of the clerk of the circuit court of the United States.

I, George F. Emery, clerk of the circuit court of the United States, for the first circuit and district of Maine, hereby certify, that the foregoing contains a correct transcript of the record and proceedings in a suit, determined in said court, at the April term thereof, in the year of our Lord one thousand eight hundred and fifty-one, wherein Henry